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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re Application of)
)
TELEPHONE AND DATA SYSTEMS, INC.)
)
)
 For facilities in the Domestic)
 Public Cellular Telecommunications)
 Service on Frequency Block B in)
 Market 715, Wisconsin 8 (Vernon))
 Rural Service Area)

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY
 CC Docket No. 94-11

File No.
 10209-CL-P-715-B-88

9411

To: The Honorable Joseph P. Gonzalez
 Administrative Law Judge

PETITION FOR LEAVE TO INTERVENE

Henry M. Zachs, d/b/a Massachusetts-Connecticut Mobile Telephone Co. (Mass-Conn), through its attorneys and pursuant to Section 1.223(b) of the Rules, hereby petitions for leave to intervene in the above-referenced hearing. In support thereof, the following is shown:

BACKGROUND

1. The Commission has designated for hearing the application of Telephone and Data Systems, Inc. (TDS) for authority to construct cellular facilities in the Wisconsin 8 (Vernon) Rural Service Area. The hearing will resolve basic character issues that were raised, but not resolved, in a proceeding involving a cellular application by a TDS subsidiary corporation, United States Cellular Corporation (USCC), for the New Orleans, Louisiana Metropolitan Statistical Area.¹

¹ Memorandum Opinion and Order and Hearing Designation Order, (the "HDO") __ FCC Rcd __ (1994), 59 FR 7673 (1994).

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2. In the New Orleans proceeding, Star Communications Co. (Star), a company owned by USCC, entered a joint venture with SJI Cellular, Inc. (SJI) to apply for a cellular license to serve a portion of the MSA. USCC, through its 100% ownership of Star, held a 49% interest in the La Star Cellular Telephone Company (La Star). After a comparative hearing, the ALJ dismissed La Star's application based on a determination that SJI, the wireline-qualified party to La Star's application, was not in control of La Star.²

3. At the hearing and on appeal to the Commission, the successful applicant, New Orleans CGSA, Inc. (NOCGSA), argued that La Star's principals had misrepresented facts and lacked candor before the Commission. Neither the ALJ nor the Commission reached these issues; however, at footnote 3 of its decision affirming the ALJ's decision, the Commission stated that the issues could be revisited in future proceedings.³ The Commission has revisited and now seeks to address these character issues in this hearing.

4. The issues in this case include a determination of whether USCC misrepresented facts to the Commission, lacked candor in its dealings with the Commission, or attempted to mislead the Commission, and whether USCC has violated §1.17 of the Commission's Rules. Based on the outcome of this issue, it will be determined

² See, *La Star Cellular Telephone Company*, 6 FCC Rcd 6860 (I.D. 1991), *aff'd.*, 7 FCC Rcd 3762 (1992), *appeal pending sub nom.*, *Telephone and Data Systems, Inc. v. FCC*, Case No. 92-1273 (D.C. Cir.).

³ *La Star Cellular Telephone Company*, 7 FCC Rcd at 3767, n. 3.

whether TDS has the requisite character qualifications to hold the Wisconsin cellular authorization.⁴

MASS-CONN'S INTEREST

5. Mass-Conn is a minority partner in the Evansville, Indiana Block A cellular licensee partnership, in which TDS holds a majority interest. It seeks to intervene here in order to place into evidence the Evansville partnership agreement and thereby provide information concerning arrangements between TDS and third parties which may be helpful to the presiding officer in fashioning any remedy in this case.

6. While the issues initially designated in this case are drawn narrowly to focus on TDS' New Orleans activities, the scope of the ultimate inquiry is much broader. At paragraph 1 of the HDO the Commission characterizes the inquiry as one into whether the conduct of TDS's subsidiary "calls in question TDS's qualifications as a Commission licensee." At paragraph 33 of the HDO the Commission states that it has "determined that a substantial and material question of fact exists whether TDS is qualified to be a Commission licensee...". It is noted at footnote 61 of the HDO that the Common Carrier Bureau has been conditioning all grants to TDS entities on the outcome of this matter and that any such further grants will be similarly conditioned.

7. The Commission noted at paragraph 38 of the HDO that various parties have raised "footnote three"-type character issues

⁴ HDO, 59 FR at 7674.

against TDS companies in other markets. It invited those parties to seek intervention here. Such parties seeking intervention will presumably also request addition of issues concerning the qualifications of TDS companies in those other markets. This proceeding, therefore, is likely to become a plenary forum for resolution of the character qualifications of TDS and the effect of any adverse findings on TDS' other interests.

8. Mass-Conn and six other parties, including a subsidiary of TDS, comprise the Evansville Cellular Telephone Company (ECTC). ECTC was formed in 1986, pursuant to the Commission's long-standing rules and policies encouraging settlement and compromise between competing cellular applicants.⁵ ECTC is the cellular Block A licensee for Evansville, Indiana. Under the ECTC partnership agreement⁶, United States Cellular Operating Company of Evansville, Inc., a TDS company, owns a 75% partnership interest, and five other companies hold minority shares; Mass-Conn holds 3.125%.

**MASS-CONN'S PARTICIPATION WILL ASSIST THE COMMISSION IN THE
RESOLUTION OF THE ISSUES IN THE ABOVE-REFERENCED PROCEEDING**

9. Mass-Conn has a cognizable interest in the outcome of this proceeding, and its participation would assist the Commission in the determination of the issues in question, warranting grant of intervention pursuant to § 1.223(b) of the rules.⁷ The ECTC

⁵ See, 47 C.F.R. § 22.29(b).

⁶ Pertinent portions of the Evansville agreement are appended hereto.

⁷ The decision to permit intervention is within the ALJ's discretion. See, *Listener's Guild, Inc. v. FCC*, 813 F.2d 465, 470 (D.C. Cir., 1987).

Partnership Agreement requires FCC-disqualified partners to dispose of their partnership interests. As a minority partner in ECTC, Mass-Conn has a substantial interest in any Commission determination as to whether TDS and its subsidiary companies possess the requisite character qualifications to hold cellular authorizations. More-over, as a result of this hearing Mass-Conn may have an economic interest which diverges from that of TDS and which would not, absent its intervention, be adequately protected by any party to this proceeding.

10. Due to Mass-Conn's status as a cellular partner of a TDS company, it may be able to assist the Commission in the determination of how penalties, if any, should be assessed against TDS. Mass-Conn submits that any penalties should be carefully crafted to preserve the rights of innocent third parties which have joined TDS in partnerships with the encouragement of the Commission. This information is especially relevant in light of the potentially far-reaching effects which an adverse character determination would have on the security of other cellular licenses in which TDS has a partnership interest.

MASS-CONN PROPOSES AN ADDITIONAL ISSUE

11. Mass-Conn has no knowledge of and expresses no opinion as to whether USCC misrepresented facts to the Commission, lacked candor in its dealings with the Commission, or attempted to mislead the Commission in connection with the New Orleans or Wisconsin application. Rather, Mass-Conn is concerned with the possible sanctions and/or remedial actions to which USCC and TDS may be

subject as a result of this inquiry. In particular, Mass-Conn seeks to protect its interest as an innocent party which may be adversely affected by a determination that USCC and TDS are not qualified to be cellular licensees.

12. Both USCC and TDS hold numerous Commission licenses.⁸ Should the ALJ or Commission determine that the public interest would not be served by granting USCC and/or TDS additional cellular licenses, such a finding could adversely affect the status of other cellular licenses held by USCC and/or TDS. Any determination that TDS is not a fit licensee obviously might be used in subsequent licensing proceedings with respect to cellular authorizations held by TDS in other markets.

13. The ECTC Partnership Agreement addresses the issue of partner disqualification, directing a disqualified partner to dispose of its interest in ECTC in a specified manner unless directed otherwise by the Commission. Section 11.3 (Partner Disqualification) provides that an unqualified partner (as determined by the Commission) must assign its percentage interest in accordance with the terms of the Partnership Agreement. In this case, where the Commission's objection is based on conduct occurring after the grant of the ECTC construction permit, a disqualified partner would be required to assign its percentage interest, after providing the other partners with 10 days written notice, if permitted to so assign by FCC and any applicable state regulations.

⁸ See, *La Star Cellular Telephone Company*, 6 FCC Rcd 1245 (1991).

14. Inasmuch as Mass-Conn, as well as the other minority ECTC partners, would be injured by an adverse determination by the Commission, Mass-Conn urges that the Commission not cancel, revoke, or otherwise suspend those cellular licenses held by USCC and/or TDS in combination with other parties. To do so could interrupt cellular service and would, in any event, unfairly impose an economic injury on innocent partners. Rather, in the event that TDS is determined not to be qualified as a licensee and therefore not permitted to assign its interests, the Commission should order reformulation of partnerships such as ECTC so as to reassign TDS' interests among the other partners. This remedy would avoid unnecessary interruption of cellular service and preserve the economic interests of innocent TDS minority partners. Consequently, a contingent issue should be added to this proceeding to assess the effect of any penalties assessed against TDS on such third parties.

WHEREFORE, the premises considered, Henry M. Zachs, d/b/a Massachusetts-Connecticut Mobile Telephone Company should be granted status as a party to this proceeding to the limited extent

of representing the interests of minority partners of TDS and TDS owned companies in other cellular markets.

Respectfully submitted,

HENRY M. ZACHS, D/B/A
MASSACHUSETTS-CONNECTICUT
MOBILE TELEPHONE COMPANY

By: 
Lawrence M. Miller

By: 
Elisabeth M. Washburn

SCHWARTZ, WOODS & MILLER
Suite 300
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036-1702
(202)833-1700

Its Attorneys

AMENDED AND RESTATED
EVANSVILLE CELLULAR TELEPHONE COMPANY
GENERAL PARTNERSHIP AGREEMENT

Dated November 14, 1990

cost of the defense of any suit or action and any sums which may be paid in settlement thereof) which any other Partner(s) may be required to pay or for which such other Partner(s) is liable in excess of its pro rata share (as determined by reference to Percentage Interests as they exist at the time such matter or transaction occurs) on account of any matter or transaction that occurred during the time that it was a Partner and for which such other Partner is entitled to indemnification under Section 8.1(b) hereof for which the Partnership is liable, except that no such contribution need be made to any Partner who acted with gross negligence or in bad faith and the same resulted in such liability, judgment or cost. Neither the preceding sentence nor the limitations on a Partner's obligation to Indemnified Persons pursuant to Section 8.1(c) shall limit such Partner's obligation to make payments to the Risk-Bearing Partner pursuant to Section 3.1(e).

ARTICLE IX

ASSIGNMENT OF PARTNERSHIP INTEREST AND ADMISSION OF NEW PARTNERS

9.1 Assignment. The power or right of a Partner to Assign its Percentage Interest in the Partnership shall be governed by the following provisions:

(a) Any Partner may assign all or any part of its Percentage Interest to any Person who is an Affiliate or Participant of the Assignor or who is a Partner.

(b) If permitted by FCC and/or state regulation, a Partner ("Selling Partner") may Assign all or any part of its Percentage Interest to any Person(s), other than pursuant to Section 9.1(a), after providing written notice to all other Partners not less than ten (10) days prior to the date on which the sale will occur, such notice stating the name and address of the buyer. The foregoing provisions of this Section 9.1(b) shall be deemed to apply to the direct Assignment by a Partner of its Percentage Interests and to the direct Assignment of a fifty percent (50%) or greater direct ownership interest in a Partner, if substantially the only asset of the Partner is its Percentage Interest, but nothing contained in this Article IX shall otherwise prohibit or restrict the sale, assignment, encumbrance or other disposition of any record or beneficial interest in any Partner or Affiliate of a Partner, nor shall any such sale, assignment, encumbrance or other disposition give rise to any rights in any Person under this Article IX, nor shall it restrict or prohibit the acquisition of any Partner or any Affiliate of a Partner, through the acquisition of an entity controlling such Partner or Affiliate of a Partner.

(c) Upon the death, Bankruptcy or incompetency of an individual Partner, or the Bankruptcy of a Partner which is a

corporation, joint venture or partnership ("Involuntary Withdrawal"), the legal representative, guardian, committee or other successor in interest of such deceased, incompetent or Bankrupt Partner, as the case may be, shall have all rights and obligations of such Partner established in Section 11.2 hereof, and the Partnership shall dissolve as a result of such event unless the Partnership is continued pursuant to the provisions of Section 11.2 hereof.

(d) As a condition to its admission as a Substitute Partner with respect to the whole or any portion of the Percentage Interest of its predecessor in interest, any Assignee of a Percentage Interest pursuant to Sections 9.1(a), (b) or (c) hereof shall obtain at its expense the prior consent of the FCC and any state or other regulatory agency, if required, and such Substitute Partner shall execute and acknowledge such instruments, in form and substance reasonably satisfactory to counsel to the Partnership, as counsel to the Partnership shall deem necessary or desirable to effectuate such admission and to confirm the agreement of the Person being admitted as such Substitute Partner to be bound by all of the terms and provisions of this Agreement, as the same may have been amended, and such Assignee shall pay all reasonable expenses connected with such admission as a Substitute Partner, including, without limitation, reasonable legal and accounting fees and expenses of the Partnership. The Selling Partner shall remain fully liable for any and all debts of the Partnership incurred prior to the date upon which the Assignment of its Percentage Interest is effective and shall until that date continue to have all of the rights of a Partner.

(e) No Assignment of a Percentage Interest shall be valid or effective unless the financing agreements entered into by the Partnership, if any, are complied with by the Selling Partner and by the Person acquiring the Selling Partner's interest.

(f) No Assignment of a Percentage Interest shall be valid or effective unless the Selling Partner shall have complied with the foregoing conditions, and no such assignment failing to so comply shall be recognized by the Partnership.

9.2 Encumbrance of Percentage Interest. No Partner shall pledge, hypothecate, encumber or otherwise grant a security interest in all or any portion of its Percentage Interest unless the secured party executes and delivers to the Partnership and the other Partners an agreement in form and substance satisfactory to legal counsel to the Partnership whereby the secured party agrees that (a) the security interest in the Percentage Interest is subject to the terms of this Agreement including, without limitation, the provisions of Section 9.1; and (b) in the event there is a default in the payment of the obligation which is the subject of, or other default under the instrument evidencing, the security interest in the Percentage Interest, the se-

the Partnership and the other Partners for all obligations under this Agreement whether they arose before, upon or after such attempted Assignment.

11.2 Withdrawal of a Partner. (a) Upon the Withdrawal of a Partner, the Chairman shall promptly notify the remaining Partners of such event and the Partnership shall be dissolved and terminated unless the remaining Partners elect by Majority Vote of the remaining Partners to continue the Partnership Business, in which case the Partnership shall not dissolve.

(b) If the Partnership is not dissolved and the Withdrawal of the Partner is a voluntary Withdrawal, the Withdrawing Partner shall forfeit its Percentage Interest in the Partnership.

(c) If the Partnership is not dissolved and the Withdrawal of the Partner is an Involuntary Withdrawal, the Percentage Interest of such Partner shall vest in its trustee in bankruptcy, legal representative or other successor in interest, as the case may be, as that of a special Partner. The special Partner shall have all of the obligations of its predecessor in interest, and shall be entitled to receive distributions payable to the Partners pursuant to Article VII hereof, and to share in the Profits and Losses the Withdrawing Partner would have received as a Partner, but shall not be entitled to participate in the management of the Partnership's business and its Percentage Interest shall not be included in calculating the Percentage Interests of Partners consenting to or voting in favor of, any matter requiring the consent, or affirmative vote of the Partners or a portion thereof.

(d) The Withdrawal of a Partner shall not be deemed to be effective until the expiration of fifteen (15) days from the day on which such notice of Withdrawal has been mailed to the other Partners contained herein. Notwithstanding anything to the contrary contained herein, a Withdrawn Partner shall remain liable for obligations incurred by the Partnership under this Agreement (including, without limitation, the obligation to make contributions pursuant to Sections 3.1(e) and 8.3) through the effective date of such Partner's Withdrawal.

11.3 Partner Disqualification.

(a) If after the Grant to the Partnership the FCC determines, based on a finding by Final Order that one of the Partners is not qualified to be the holder of a license, or participant in a holder of a license for a cellular system (the "FCC Objection"), that a Partner is a nonqualifying Partner, then such nonqualifying Partner shall either overcome any objections of the FCC to its participation in the Partnership, or it shall Assign its Percentage Interest as follows:

(i) If the FCC Objection is based on the conduct of said Partner occurring in whole or in part before the grant of the Construction Permit to the Partnership, then not more than five (5) days after the FCC Objection finding said Partner to be a nonqualifying Partner becomes a Final Order, the Chairman shall notify all other Partners that there is a nonqualifying Partner, and within ten (10) days after receipt of such notice, any of the other Partners may notify the nonqualifying Partner in writing that they intend to purchase the nonqualifying Partner's Percentage Interest (or their pro rata share thereof based on their then current respective Percentage Interests if more than one Partner gives such notification), and any Partner who timely gives such notification (the "Purchasing Partner") shall thereby be entitled to purchase the nonqualifying Partner's Percentage Interest (or its pro rata share thereof). If the Partners cannot agree upon a price to be paid for the nonqualifying Partner's Percentage Interest, an independent appraisal of the fair market value of the nonqualifying Partner's Percentage Interest (determined on the basis of the Percentage Interest considered alone and not in conjunction with other assets that the nonqualifying Partner may hold) shall be promptly commissioned; one qualified independent appraiser shall be selected by the nonqualifying Partner, at its expense, and another qualified independent appraiser shall be selected by the Purchasing Partner(s) at their expense. The two appraisers so chosen shall then promptly choose a third appraiser, whose fees shall be shared equally by the Purchasing Partners and nonqualifying Partner. Each appraiser shall make an appraisal independently of the other, and such appraisals must be completed within forty-five (45) days of the notice from the Purchasing Partners. The jointly selected third appraiser's appraisal shall be averaged with that appraisal of the other two appraisers which is closer to it and that average shall be taken as the appraised fair value of the nonqualifying Partner's Percentage Interest (the "Appraised Value"); within forty-five (45) days after the Appraised Value has been determined, the Purchasing Partner(s) shall tender payment in full for the nonqualifying Partner's Percentage Interest (or each their pro rata share thereof based on their then current respective Percentage Interests), and the nonqualifying Partner shall assign its Percentage Interest to such Purchasing Partner(s) in proportion to their respective payments. If no Partner gives timely notification of its intent to purchase the nonqualifying Partner's Percentage Interest in accordance with this subparagraph, or if one or more Purchasing Partners, having given timely notification, the Purchasing Partners fail to tender in the aggregate full payment for the Percentage Interest of the nonqualifying Partner, in timely fashion, then the nonqualifying Partner shall instead Assign its Percentage Interest pursuant to Section 9.1(b) hereof.

(ii) If the FCC Objection is based on the conduct of the Nonqualifying Partner occurring after the grant of the Construction Permit, then the Nonqualifying Partner shall assign its Percentage Interest pursuant to Section 9.1(b).

(b) If the Nonqualifying Partner has failed to overcome the FCC's objections to its participation in the Partnership or to obtain an Offer for its Percentage Interest within 120 days of the date that it was authorized under subsections (i) or (ii) of Section 11.3(a) to Assign its interest pursuant to Section 9.1(a), which Offer must be accepted by a written purchase and sale agreement and the sale closed within a reasonable time thereafter, then the Nonqualifying Partner shall be deemed to be in default, shall no longer have a Percentage Interest in the Partnership, and shall lose all rights under this Agreement, upon the return of its Capital Contribution.

Notwithstanding anything to the contrary herein contained, if the FCC directs a Nonqualifying Partner to dispose of its Percentage Interest other than in accordance with this Section 11.3, the Nonqualifying Partner agrees to dispose of its Percentage Interest in accordance with the direction of the FCC and the provisions of this Section 11.3 shall be of no force and effect.

ARTICLE XII

OTHER BUSINESS

12.1 Other Business. It is understood that the Partners are and will be engaged in other activities and businesses unrelated to the Partnership, and, except to the extent otherwise agreed to, each of the Partners shall be required to devote only so much of its time as it in its sole discretion may deem necessary to the affairs of the Partnership. Except as set forth in Section 12.2 hereof, any Partner or Participant may engage in and have an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, operation and management of communications businesses of every type whether or not in the Area. Neither the Partnership nor any other Partner shall have any rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom, regardless of the location of such venture and whether or not such venture was presented to such Partner as a direct or indirect result of its connection with the Partnership.

12.2 Covenant Not to Compete. Notwithstanding anything to the contrary contained in this Agreement, until such time as the Partnership terminates in accordance with the provisions hereof, unless all the other Partners consent thereto, no Controlling Partner nor any of its Affiliates shall have any interest, direct or indirect, whether as an owner, system operator (except in connection with the installation and testing of equipment), licensee, general manager, stockholder, investor, partner or lender, agent or dealer (other than in connection with the selling, leasing or financing of cellular radio equipment sold in the ordinary course of its business) in any other wire-

CERTIFICATE OF SERVICE

I, Nancy M. Cassady, Secretary in the firm of Schwartz, Woods & Miller, certify that I have on this 18th day of March, 1994, sent by First Class U. S. mail, postage prepaid, copies of the foregoing PETITION FOR LEAVE TO INTERVENE to:

Alan Y. Naftalin, Esquire
Herbert D. Miller, Jr., Esquire
Koteen & Naftalin, Suite 1000
1150 Connecticut Avenue, NW
Washington, DC 20036

R. Clark Wadlow, Esquire
Mark D. Schneider, Esquire
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20036

Cheryl A. Tritt, Chief *
Common Carrier Bureau, Room 500
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Carmen Cintron, Esquire *
Joseph Weber, Esquire *
Common Carrier Bureau, Room 644
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Kenneth E. Hardman, Esquire
1255-23rd Street, NW
Washington, DC 20037

L. Andrew Tollin, Esquire
Wilkinson Barker Knauser & Quinn
1735 New York Avenue, NW
Washington, DC 20006


Nancy M. Cassady

* By Hand